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TAGS: [KJUS](#) [PTER](#) [PREL](#) [PGOV](#) [GM](#)
SUBJECT: AL-MASRI UPDATE -- NEXT STEPS ON ARREST WARRANTS

REF: BERLIN 200

Classified By: Economic Minister-Counselor Robert F. Cekuta for Reasons
1.4 (b) and (d)

¶1. (S/NF) Summary: The MFA's Acting Legal Adviser told embassies Feb. 5 the German Government fully understands the USG's strong desire that international arrest warrants not be issued in the al-Masri case. She noted, however, that such warrants are routinely issued ("99.99 percent of the time") in connection with cases involving another democratic state and that it would be highly unusual for the MFA to block such a request. Additionally, in light of the domestic political pressure on the German Government -- and on FM Steinmeier in particular -- over the al-Masri and Kurnaz cases, her sense was the German MFA and Justice Ministry in all likelihood will not/not block a request for the issuance of international arrest warrants in this case. End Summary.

¶2. (S/NF) EMIN and Global Affairs Counselor met February 5 with Acting MFA Legal Adviser Susanna Wasum-Rainer using Department-supplied points to underscore the serious negative implications of a German decision to issue international arrest warrants in the al-Masri case. EMIN noted that reports in the German media, including statements attributed to FM Steinmeier, indicate the German Federal Government (MFA and Justice Ministry) does not/not plan to block the anticipated application of the Munich prosecutor to issue international arrest warrants in the Al-Masri case, based on the domestic warrants that had already been issued. EMIN strongly urged that the German Government weigh carefully all factors relevant to the case -- including the potential repercussions for our overall bilateral relationship -- in deciding whether or not to allow the international arrest warrants to be issued.

¶3. (S/NF) In response to EMIN's query, Wasum-Rainer said at this point no/no request has been received from the German federal police for international arrest warrants to be issued in the case. (Note: this statement tracks with information we obtained earlier in the day from Judge Ralf Riegel, the German Justice Ministry official who will be tasked with coordinating any such request.) She nonetheless expects the request to be made soon. Wasum-Rainer added that the German police (BKA -- Bundeskriminalamt) usually pass such warrants directly to the police authorities where the individual is believed to live. It is only in cases where there are human rights or similar concerns that the MFA is asked to decide whether the arrest request should go forward. For example, the MFA looks closely at German authorities' requests for international warrants against Chinese nationals, since PRC authorities will often decide to try the individuals themselves and sometimes impose much stricter penalties than German courts would hand down. Her colleague Andreas Zimmer, MFA Office Director for International Law, explained that the guidelines are set forth in the German federal "Regulations

for Dealing with Foreign Countries in Criminal Matters." He cited the relevant text, as follows (informal Embassy translation): "Before executing an incoming or forwarding an outgoing request, the highest judicial or administrative authority has to be notified and allowed to respond if the request, from the point of view of the requesting or requested state, could be of particular political, factual or legal importance. In particular, a specific importance is deemed to exist if there are indications that the death penalty will be imposed or any other violation of the fundamental principles of the German legal order...."

¶4. (S/NF) Wasum-Rainer noted that this provision is normally applied in connection with extradition requests made by a third country to Germany, in order to ensure fair treatment of the individual extradited. It nonetheless forms the legal basis for consideration of "political implications" of transnational requests, she added. In the case of applications for international arrest warrants, the German federal Government has no objection in "99.99 percent of the cases" involving other democratic states, Wasum-Rainer said.

¶5. (S/NF) Wasum-Rainer said she understood the USG concerns, but stressed the case also entails serious domestic political implications. Specifically, she referred to the current Bundestag and media criticism of FM Steinmeier's alleged role in a number of terrorism-related cases, such as al-Masri and "Bremer Taliban" Murat Kurnaz. In this context, a decision by the MFA (read Steinmeier) to block issuance of the international arrest warrants would cause a great deal of domestic "political turbulence."

¶6. (S/NF) EMIN noted our respect for the independence of the German judiciary, but reiterated our serious concern that moving forward with international arrest warrants would cloud our bilateral relationship and impact negatively on a number of important bilateral undertakings. Wasum-Rainer in return asked that we convey to Washington the "serious dilemma" in which the MFA finds itself in this case. She also undertook to keep us informed of further developments and, in particular, to notify us as soon as the MFA receives a formal request for an international arrest warrant.

TIMKEN JR